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Local Tradition as Sunnah in Malik's Perspective and its Relevance to Islamic Law Development in a Pluralistic Society

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In Muslim societies some consider local traditions to be contrary to Islam. This understanding is not in accordance with the conditions of a pluralistic modern society because it can incite a radical and intolerant attitude. Therefore, a model of understanding of Islam must be sought that can bring Islam and tradition together peacefully, as suggested by Imam Malik bin Anas. In his work, *al-Muwatta'*, Malik states that the local traditions of the people of Medina are part of Sunnah. Thus they can be made law if there are no other sources of law, such as hadith. In some cases, these local traditions can be stronger and must take precedence over traditions conveyed by individual sources. Malik's understanding has succeeded in aligning Islamic law and community traditions and jointly realising benefits. Malik's view is relevant in the effort to formulate Islamic law as dynamic, elastic and substantive, in accordance with the development of a pluralistic society.

Key words: *Sunnah, tradition, Islamic law, diversity.*

Introduction

The relationship between Islam, Islamic law and local traditions remains a problem.¹⁸ Local traditions are often opposed to Islam because they are not considered to originate from the Qur'an or Sunnah of the Prophet. Some Muslims, in the name of pure and kaffah Islam, have rejected and labelled heresies to various local traditions and parts of the world. These traditions are considered¹¹ be un-Islamic, not in accordance with the behaviour and habits of the Prophet Muhammad (the Sunnah of the Prophet) and the Companions of the Prophet. Local traditions and the Sunnah of the Prophet or prophetic traditions are positioned as two



contradictory entities.

The above implications have an impact on the development of Islamic law. Islamic legal scholars who have a textual and normative understanding reject local traditions or customs as the basis for establishing Islamic law, whereas scholars who have a substantial and multicultural understanding consider local customs or traditions to be accepted as a source of Islamic law. As a result, Islamic Shari'ah or Islamic law does actually contain principles of benefit in creating new rules, carrying out renewal and reinterpretation, so that Islamic law does not become frozen, but continues to develop in line with social development and culture (Muhammad Sa'id al-'Asymāwī., 1992).

The process of accommodation and integration of local traditions into Islamic law has been undertaken well by Imam Malik bin Anas (died 179 H). According to Malik, various social traditions, especially the traditions of the people of Medina, are part of the Sunnah which is the second source of law after the Qur'an. The implication of Malik's view is that tradition can also be an authoritative source of Islamic law, as is the Sunnah. In addition to including the Sunnah, the tradition of the Madinah community where Malik lived is also named by Islamic legal experts such as Amal Ahl al-Madinah or Ijma' Ahl al-Madinah.

As it is considered the Sunnah, Malik views the position of the Medina tradition as stronger than those conveyed by individuals (hadis ahad or ahad traditions) (Alamsyah and Mahmudah, S. 2020). Therefore, it is not uncommon for Malik to reject the existence of certain traditions and to accept the social habit which has been directed as a rule of law. For example, Malik once rejected a hadith about khiyar (the right to choose between resuming buying or cancelling) which reads, "both sellers and buyers have khiyar rights as long as they are not separate." Malik did not accept or want to practice this hadith, because according to him the khiyar tradition did not exist in the tradition of the Medina people. He said "laisat indana hazihi sunnah" which means this rule of khiyar is not a tradition (sunnah) in our society (Al-Imam Malik ibn Anas., 1988).

Malik's accommodation to the local traditions of Medina as a Sunnah and a strong legal proposition is interesting to examine because it could have further implications. If the Madinah tradition of accommodating is also carried out with other local traditions, Islamic legal products will vary according to the diversity of the local tradition itself. This diverse, flexible and elastic form of Islamic law is compatible with the development of a pluralistic society (Alamsyah., Mahmudah, S., and Huda, S. 2020).

The focus of the problem examined in this paper is Imam Malik bin Anas' view regarding local traditions of Medina as Sunnah in his al-Muwatta' so that it can be used as a source of



Islamic law, as well as the relevance of his thinking to the development of substantive and cultural Islamic law in a pluralistic society.

The conceptual framework of the study uses the theory of inculturation of the Koran from local traditions of the pre-Islamic Arabic era. Inculturation of Islamic law and local Arabic tradition from the early days of the birth of Islam in Mecca will be used as a foundation of thought in order to reconstruct the relationship of Islamic law and local traditions in harmony. The theory of “living sunnah” from Fazlur Rahman is also relevant to this study.

Literary Studies and Philosophical Framework

Malik bin Anas's thoughts about the Sunnah and Medina charity have been widely researched but no one has examined the Medina charity as a local tradition. This anthropological approach can be used as a basis for reconstructing a dynamic and varied Islamic law in accordance with the development of the time and place where Islamic law lives and develops.

These studies include Yasin Dutton's work entitled “Sunna,” “Hadith,” and “Madinan” Amal,” which discusses Amal Medina as well as the Sunnah referred to in the establishment of Islamic law. Dutton also wrote a book entitled “The Origins of Islamic Law; Qur'an, the Muwatta' and Madinan Amal” (Yasin Dutton, 2013). Neither of these works have examined Amal Madinah as one of the local traditions which can be used as a basis in the development of Islamic law that is as diverse as the local tradition itself. This study will be discussed in this article.

Another article entitled “The meaning and scope of the Sunnah according to Imam Malik and the practice of the people of Medina,” written by Ibrahim Kutluay (Al-Adlabi, Şalāh al-Dīn Aḥmad. 1988) focuses more on discussing the meaning and scope of the term sunnah according to Malik and the people of Madinah and does not examine the development of debgan Islamic law based on the methodology of local traditions in the Medina Madinah itself (Al-Āmīdī, Alī Saif al-Dīn, 1968).

Another study related to this topic was written by Adis Duderija called “Evolution in the Concept of the Sunnah during the First Four Generations of Muslims in Relation to the Development of the Concept of an Authentic 'as based on Recent Western Scholarship” (Al-‘Asymāwī, Muhammad Sa’īd. 1983). This paper discusses the evolution of the concept of the sunnah amongst four generations of early Muslims and its relationship with the concept of authenticating hadith by Western scientists.

Salamah Noorhidayati article entitled “The position of the book al-Muwatta' in the history of Islamic law: analysis of Yasin Dutton's view” (Al-Damīnī, Musfir ‘Aẓm Allāh. 1998)



specifically deals with the book “Al-Muwatta” as the first source and model in the formation of Islamic law.

Theories and relationships between Islamic law and tradition have also been studied by many researchers. In the theory of inculturation, the relationship between al-Qur'an and local traditions of pre-Islamic Arabic has produced Arabic culture based on its world view, including monotheism, social ethics or morality. Local Arabic traditions become mediations for the process of cultural reproduction. The process of reproduction of al-Qur'anic culture begins with the stages of adoption, adaptation and innovation to the local traditions of pre-Islamic Arabic culture. The implementation of this process takes place in stages (tadarruj). The next stages are socialisation and internalisation. This combination of old and new traditions is socialised and internalised into social institutions. Thus, the reproduction of the culture of the Koran produces new cultural products in the form of social institutions that are the result of assimilation between the teachings of the Koran and local traditions (Al-Namiri, 'Abd al-Mun'im, 1995).

The inculturation of al-Qur'an reproduction and local Arabic traditions were continued by the Prophet through his Sunnah thus further strengthening religious dialogue with local traditions. This has resulted in a new cultural product which is better known as the historical Islamic Shari'a. It is one of the methods that make up tradition. According to this law, Islamic law is a system of laws, whereas Islamic law is more universal and comprehensive, because Islamic law is the core that forms the law rather than the law itself (Al-Sibā'i, Muḥammad Muṣṭafa., 1965).

On the other hand, Islam, including the Sunnah of the Prophet will appreciate prior and developing traditions, (An-Na'im, Abdullah Aḥmed.,1990) because tradition is the potential energy of the collective knowledge system of society above the values that bring about civilised survival. In Muslim societies, local wisdom is well documented and contained in classical literary works that were passed down by ancestors from generation to generation and have a strong position in the literature.

The Sunnah apparently not only contained the documented news in the Hadith, but also included 'charities or traditions continuously practised by local people, such as 'Madinah charity in the book of Al-Al-Muwatta' by Malik, who maintains that the truth is not seen to the extent of its compatibility with the literal sound of the text (both the Qur'an and especially the hadith), but how much is its muwafaqah with the 'charity (tradition) continuously practised by the people of Medina. For Malik, texts (especially Hadith texts), particularly those that are established have an illustrative rather than authoritative role, which is inseparable from the background and socio-historical setting surrounding his birth (Azami, Muḥammad Muṣṭafa. 1985). Thus, those traditions which are not in accordance with traditions ('amal) of Medina cannot be used as a reference points.



The above practice has also been undertaken by prominent figures spreading Islam in Indonesia, commonly called Wali Songo. They use a cultural approach in the propaganda of Islamic Islam in Java (Brown, Daniel W. 1996). Islamisation is carried out by Wali Songo with a flexible style of Islamic teaching to continue to establish local traditions. In the Islamisation movement carried out by these trustees, many use local cultural media that already exist by providing Islamic values in stages, such as puppet art, gending, for example poetry Ilir-ilir and tandure wis semilir. Islamisation using a cultural approach by the Nine Guardians and others has yielded satisfying results.

The Islamisation that was illustrated during the entry of early Islam has shown a harmonious relationship between Islam, Islamic syari'at and existing local traditions. In this dissertation, the emphasis is on showing disharmonic relationship between Islam, Islamic law and local traditions in the modern era which must be reconstructed into a harmonious relationship.

Abdurrahman Wahid or Gus Dur requested that God's revelation be understood to offer the concept of "Native Islam" as an effort to "reconcile" Islam with local cultural forces, so that local culture is not lost. Indigenous Islam also does not represent a kind of "Javanization" or syncretism, because Islamic indigenisation only considers local needs in formulating religious laws, without changing the laws themselves (Coulson, N.J. 1964). Gus Dur's Islamic Nativism inspired the emergence of the concept of Islamic Nusantara amongst Nahdlatul Ulama organisation and later became an important participant in the Islamic moderation movement in Indonesia.

Evolution of the Sunnah Concept

Understanding the Sunnah as a tradition that has taken root and as an important source of Islam continues in the lives of Muslims after the Prophet. For example the caliph 'when appointing several governors in some areas, Umar told them to teach the religion and the Sunnah of the Prophet, or take advantage of the Sunnah that has been established in society. The Sunnah referred to in 'Umar's instructions is the same tradition that had taken root in the community before Islam.

Before the formulation of the concept of the Sunnah was carried out by Imam Shafi'i, (Hallaq, 1992) the sunnah was understood as a concept of behaviour - applied to both physical and mental actions, as well as a law of behaviour, which both occur only once and happens repeatedly. Here Sunnah is distinguished from the hadith, as the hadith (literally means story, narration and report) is understood as a narrative that contains and aims to provide information about the Prophet's words, as well as information about Companions, particularly senior Companions.



Based on historical evidence, the word sunnah which means “traditions or habits that take place orally and hereditarily,” already existed in pre-Islamic Arabic society. The Sunnah contains a range of teachings including daily practical habits, certain procedures or transactions, certain actions and rules that bind all members of the community (Goldziher, I, 1981). When there has been a systematisation of the source of Islamic law, the sunnah is understood as representing everything from the Prophet in the capacity to form shari'ah besides the Qur'an in the form of words, deeds and provisions or anything which deserves to be part of the argument for sharia law (Ibn Anas, 1992).

Thus, in the most basic sense the sunnah means that allies have been accepted in the community, also viewing life as something that has been and continued to be followed by certain people.

In the historical study of the development of Islamic law we can see the dynamic and evolutionary development of the concept of Sunnah. . The sunnah was originally only the sunnah of the prophet then spread to the sunnah of friends, tabi'in, and others.

In Islamic treasures, ordinary culture is called 'urf' or 'adah.' Al Qaradawi explained that 'urf' is a habit and behaviour in daily life which becomes a custom for generations, both in words and deeds, generally and specifically.

Many shari'ah rules originate from pre-Islamic traditions, including: (1) Rites of Pre-Islamic Arabic Heritage Traditions (2) Rites of Hanifiyyah Tradition Worship (3) Social rites (4) Traditions of Punishment Rites (5) Traditions of war rites (6) Traditions of Political Rites.

Malik's Thoughts about Traditions as Sunna in Kitab al-Muwatta'

Malik bin Anas was born in 94 AH in a village called Dhul al-Marwah about 192 km from the city of Medina (Rahman., 1965). Imam Malik is a well-known hadith expert through his brilliant work “Kitab al-Muwatta'” As the founder of the Maliki school, Imam Malik had many great students such as al-Shafi'i, the caliph al Mansur, Sufyan Tsauri, Qadi Abu Muhammad Yusuf and others.

The increasingly widespread power of the Islamic government in the Malik period, from the Umayyad era to the Abbasid dynasty, made the problems faced by the ummah more complicated. Contact between religion and local culture is inevitable. For the first time, religious sacred texts had to adapt to the socio-cultural settings of the conquered regions which were quite varied. Such cultural contact caused increasingly varied interpretations of religious texts.



In his work “al-Muwaththa,” Malik adheres to the Koran, as-Sunnah, charity expert Madinah, also qiyas, maslahah mursalah, etc., as a source of law (Syahrūr., 1990). The use of Madinah traditions or charity as a source of law is a privilege of the Malik priest who is not present in other ijtihad figures. Malik reasoned that the inhabitants of Medina knew about the descent of the Qur'an and the explanations of the Prophet Muhammad. Therefore, the tradition of the people of Medina automatically becomes a source of law that is higher than the hadith of ahad and qiyas. The practice of the inhabitants of Medina is seen as the practice of Islam in accordance with the Messenger of Allah who was revealed and preserved by the first generation of Muslims for subsequent generations. In his letter to al-Laits ibn Sa'ad, Malik said that people should follow the inhabitants of Medina as it was the place where the al-Qur'an originated from,, “so the people must actually follow the population of Medina because in Medina al-Qur'an is revealed” (Schacht.,1965).

In this case Malik was of the view that the people of Medina practised something and the charity was agreed upon by the ulemas, therefore the practice of Madinah residents automatically became one of the sources of law that took precedence over the traditions of ahad, even though it was carried out by the majority of the population. Therefore, Malik mentioned a phrase from his teacher, Rabi'ah ibn Abdirrahman stating “A thousand out of a thousand people (as the origin of actions) are better than one person (words).” This means that many people's habits are hereditary or more valuable than personal information.

Some of the terms used by Malik to refer to the habits of the people of Medina include ‘*al-amr al-mujtama' alaihi 'indana, al-amr allazi la ikhtilaaf alaihi 'indana, al-amr 'indana, al-amr allazi adrakat 'alaihi ahlul ilmi bi baladina, maadhat as sunnah allazi la ikhtilaaf 'alaihi indana*’ (Wahyuningsih et. al., 2019).

Imam Malik's priority was the tradition of the people of Medina rather than the hadith ahad, which does not mean that he considers the charity of Medina's population contrary to the hadith of the Prophet. It was only considered an attempt at combining ‘aql’ and ‘naql,’ or ahad hadith and ijtihad thinking (Wahid., 2006).

An example of the priority of the Medina tradition is the fact that Malik said zakat on agricultural produce such as vegetables and fruits other than those described by the Prophet Muhammad was not mandatory. If vegetables or fruits are sold, the money from the sale must be compulsory after being in the hands of the owner for one year. According to Malik, this is the practice of the inhabitants of Medina. As a result, he rejects the generality of the history of the tradition of Salim ibn 'Abdullah stating, “the Prophet Muhammad said: plants that get a splash from the sky and the source or splash of rain water then the zakat by 10%, while plants that are watered with watering the zakat are 5%” (Bukhari's hadith).



According to Malik, the hadith only applies to the types of fruits that have been described by the Apostle, such as dates, grapes and wheat (as staples) which are filling, because that is what is found in the practice of the people of Medina (Wensinc., 1932).

Malik can accept ahad hadith if it is consistent with the tradition of Medina or at least not in conflict with it. If there are traditions that are considered foreign and unknown in the customs of the people of Medina, Malik rejects them. For example, the khiyar hadith states, "Two people who make a transaction may do khiyar as long as the two have not separated."

The above hadith was rejected by Imam Malik on the grounds that khiyar majlis was unknown or did not become a tradition practiced amongst the people of Medina. "Amongst us (Madinah) there are no known boundaries and there are also practices that are practiced about khiyar."

Malik's refusal of the ahadith and prioritising the traditions of Medina rather than the ahad is understandable as the position of Medina's charity can be the same as muthatith's hadith. According to the theory of Islamic law, the tradition of mutikir is stronger than the Hadith ahad.

Likewise, according to the hadith of history, 'Aisha stated that initially the composition which caused the relationship of mahram consisted of ten orders, then the verse was enshrined with five implements and the rule continued until the Prophet died. The Hadith states, "From Aisha she said:" The past verses of the Qur'an have revealed that ten times the composition makes a person a mahram and then deleted with five times the breast. When the Prophet died and the verses were still read as part of the Qur'an. According to Malik, Ayesha's hadith was not accepted because it was not practised in Medina (Laisa 'alaih al-'amal).

In another case about six days of fasting in Shawwal, Malik objected to imposing the sunnah law. Az-Zarqāni explained that one of Malik's objections was that he never saw any of the Science and Fiqh experts in Medina during his time who performed this fast (Zaid., 1964).

Malik who favoured the local traditions of Medina over the hadiths on Sunday received a of rejection from several scholars, including al-Shafi'i and Abu Yusuf. According to them, Malik's view was too excessive, because the people of Medina are not ma'shum (preserved from sin). In fact, Malik's view which favours the Madīnah tradition above the hadith of the Sunday is a privilege as well as being unique, as there are also certain imams who have other idiosyncrasies such as Abu Hanifah.

The above description shows that Malik really appreciated Medina's local traditions. For him, the Medina tradition is the embodiment of previous Sunnahs, including those of the Sunnah of the Prophet, his position can be seen as equivalent to the Muthatith Hadith.



The essence of Malik's thought respects the above traditions of Medina, which can be analogous to other local traditions. Each local tradition has been firmly embedded in society and carries the values of goodness or benefit in the same way as the values of the Sunnah, so that it can be accepted as a source of law. On that basis, Malikiyah scholars extend on Malik's thought by appreciating the tradition which came to be known as 'adat or'urf.

Malik's view was strengthened by the emergence of Qadi Abu Yusuf's theory, the great scholar of the Hanafi school of thought, according to which the law contained in the passage, and the law originating from "adat" which was changed, so the law in "nas" could change as well. Consequently, the substance of benefit in tradition is the highest value that must be realized rather than y formal and textual law in the verses of the Qur'an or hadith.

Relevance to the Development of Islamic Law in Pluralistic Societies

Malik's attitude which respects established local traditions rather than the hadith gives the message that people's habits who benefit must take precedence over the practice of normative religious texts. It also provides a clue regarding religious renewal by eradicating local culture or purification. The development of early Shari'ah actually revealed a harmonious relationship between religion and culture.

Purification of religion has indeed been an important agenda of Islamic modernism in Indonesia. This movement focuses on eliminating the entire culture that is considered to contain elements of superstition, heresy and khurafat. This harfiyah purification model seeks to eliminate the existence of local culture that has been passed down for generations which is not in accordance with Islamic teachings. As the standard used as a reference in religious purification is the Islam that existed at the time of the Prophet, the religious purification movement is always based on hadith. This then has implications for the removal of all traditions of Indonesian people that are considered to be in conflict with the hadith, As the traditions say more about Arabic culture, the purification of Islam based on the hadith itself is more symbolic of the inauguration of the Arabic tradition as an Islamic one.

The idea is now re-emerging from the fundamentalist movement that flourished in Indonesia, as attempts are made to complement Islamic sharia and teachings either as kaffah or in totality. Like its predecessors, the starting point of what is called the teachings of Islam, formally returned to what existed at the time of the Prophet. This phenomenon fosters various implications of behaviour in society. For example, in terms of clothing, they try to imitate the Prophet by using Arabic robes, or maintaining a beard, shave their moustache, using a veil, using Arabic terms as a substitute for local terms and so on.



With the emergence of this phenomenon, the existence of local culture has become marginalised. The modernism purification movement is attempting to eliminate slametan culture, gamelan music and many local traditions that are considered to be Hindu and Kejawan. The fundamentalist Islamic movement seeks to eliminate all local culture and replace it with a system of Islamic teachings modelled on the Arabic period of the Prophet. The emergence of the above phenomenon has raised the anxiety of some Indonesian thinkers. Ideas to shape the character of local Islamic law were conceived in the minds of Muslim intellectuals, for example Hasbi as-Shiddiqy, who once tried to introduce his Indonesian Fiqh ideas. In this case Hasbi was influenced by the concepts of Hijaz Fiqh, Egyptian Fiqh and other local fqih that emerged in several Muslim countries. Hasbi's concern is also related to the inability of Indonesian ulema to perform ijhtihad according to Indonesian personality, so that it often applies Egyptian or Hijaz Fiqh to the community on the basis of imitation. Furthermore, with the limitations of Indonesian clerics who were unable to produce Fiqh with Indonesian personality and realised the impossibility of the emergence of progressive thinking from conservative clerics, Hasbi then invited elements of the Indonesian College to print mujtahid cadres who would continue the Indonesian Fiqh project (Zailani, Kaizal Bay, dan Sri Chalida. 2016).

One of the things that is interesting to note is that in forming Indonesian Fiqh, Hasbi stressed the importance of awareness and wisdom to conduct historical reflections on Islamic legal philosophy in its early development. This perspective teaches that Islamic law can only work well if it is in accordance with the legal awareness of the community, including the law formed by environmental awareness, or with local culture and traditions. In this case, Hasbi conceptualised that considering the presence of local traditions (adat, 'urf) as a reference to the formation of a new format of Islamic law became a necessity.

This conception is based on Islamic egalitarianism which results in all 'urf, in society can be used as a source of law. Thus, it negates 'urf from Arabic society which can make podation in the formulation of the law. For Hasbi, as long as it does not conflict with the principles of Islamic teachings and within certain limits all urf can be accepted as a source of Islamic law. In addition, Abdurrahman Wahid also conceptualised the pribumialisation of Islam. Native Islam is interpreted as an effort to re-establish our cultural roots, while still trying to create a religious community. In his thoughts, Wahid tried to position Islam and other cultures in a dialogic position. In this case Abdurrahman Wahid stated: "... between Islam and the understanding of other ideas or other cultures there is a process of taking and learning from each other.

The logical consequence of this openness is the necessity to only put Islam as a connecting factor between various local cultures. Serving all local cultures (will) foster universality of views without uprooting their respective historicity."



2 On this basis, Abdurrahman Wahid rejected the “Islamisation,” “Arabization” or “formalisation of Islamic teachings in the cultural realm.” From the start, Abdurrahman did not make Islam an alternative. Consequently, all religious teachings that have been absorbed by local culture are retained within the frame of locality. At this level, he disagrees with changing of a number of words into Arabic, such as birthdays replaced with ‘milad,’ ‘good morning replaced with ‘assalamu’alaikum,’ friend or friends replaced by ‘ikhwan,’ darlings replaced by ‘prayer,’ and so on. This latter process is called ‘Islamisation’ and ‘Arabisation.’

At least two important paradigms can be drawn from Islamic law that must be taken into consideration in the process of forming Islamic law that is unique to Indonesia. The first is contextual, that is, Islam is understood as a teaching that is related to the dimensions of age and place. Consequently, changing times and places require interpretation and ijtihad. As a result, Islam can truly salih li kulli era which means that Islam will be relevant at all times and places. Secondly, respecting local traditions involves is built from the historical reality that Islam cannot be separated from the traditions of pre-Islamic society. In fact, Islam has adopted local traditions that flourished in Arabic society. Thus, Islam positions local tradition not in the position of the object that must be conquered but in a dialogic dimension.

15 In the Indonesian context, KHI (Compilation of Islamic Law) which also adopted the gono-gini system is a form of dialectic of Islamic law between traditions that developed in Indonesia. These are the old ideals of Islamic law philosophers in Indonesia who want a Fiqh with an Indonesian personality, such as Hasbi Ash-Shiddieqi or Hazairin.

The formulation of KHI shows that Islamic jurisprudence is an organic and developing law, which is capable of struggling with local problems that always demand new ethics and paradigms. The breadth of Islamic law is proof of that dynamic space. It is an objective implementation of Islamic doctrine which, although based on absolute and solid truth, also has dynamic space for development, renewal and life in accordance with the flexibility of time and space. The amount of mutual acculturation between Islam and local culture is also recognised in a method or basic provision in the Science of *usul al-Fiqh*, that “adat is punished” (*al-adah muhakkamah*), or more fully, “Adat is shari’ah which is condemned” (*Al-adah shari’ah muhakkamah*). That is, the customs and habits of a community, including its local culture are a source of Islamic law.

Islam as a universal religion that sometimes meets with different local traditions. When doing so, the face of Islam changes between places. There are two important things to realise in response to this problem. First, Islam was actually born as a local belief which was universalised and transcended local conditions. In the Arabic context, what is meant by Islam as a local product is the Islam that was born in Arabia, precisely the Hijaz region, in the Arabic situation and at that time was intended as a response to the problems that developed there.



Arabic Islam continues to grow and develop when it encounters Persian and Greek cultures and civilisation, so that it undergoes a process of dynamising culture and civilisation.

Secondly, although we believe that Islam is a universal, supernatural revelation of God, ultimately it is perceived by the believer in accordance with the experience, problem, capacity, intellectual, cultural system, and all the diversity of each adherent in his or her community. Thus, it is precisely these two dimensions that need to be realised in one aspect of Islam as universal and a critique of local culture, then local culture as a form of wisdom (local wisdom) of each adherent in understanding and applying Islam.

For Imam Malik, local traditions of the ⁴people of Madinah or 'amal ahl al-Madinah,' are clear examples of the first type of sunnah, therefore the Medina tradition has a very strong legal force to be used as evidence in determining Islamic law. Although the local traditions of Madinah may have no direct support of the Prophet, their traditions are still considered to have originated from the previous generation's pious scholars who were authoritative in Islamic law, ranging from tabi 'tabiin, tabi'in, and so on to the Prophet. As the substance of the Madinah charity also lives on from the Prophet and becomes muthat information ('amali' or 'qauli'), the Sunnah of Madinah or the Madinah charity must take precedence over the hadiths of ahad or individual information about the Prophet. If there are certain traditions from a person which are not in accordance with the traditions of Medina or the people of Madinah, Malik firmly rejects them and is not considered as a sunnah.

The attitude of Malik bin Anas who made the local traditions of Medina a source of law and prioritised the from the hadiths of Sunday when contradictions or discrepancies occurred contained creative and innovative breakthroughs that had a great influence in the aftermath. Malik's main consideration is the search for benefits, and he found many of these benefits in the established traditions of the community, which are well-known and have become habitual. This is certainly not experienced through the teachings of hadith texts that are still foreign or gharib.

The substance of Malik's ijtihad is relevant in the effort to develop Islamic law in the present. Islamic law can be formulated in an atmosphere of harmony with local culture, even creating dialogue and complementing each other, in accordance with the rules of "al-'adah muhakkamah." Thus Islamic law brings more benefit to the community.

Conclusion

Malik bin Anas views the local traditions of Medina as the embodiment of the sunnah, including the sunnah of the prophet, so that it is equally important as a source of Islamic law. Malik's view which respects the local traditions of Medina can be developed from local



traditions in other places on the basis of equality in substance as a habit that has been firmly planted and creates good values. Thus, various traditions or cultures of a healthy society can be used as legal norms and considered as Islamic law. In Islamic law, these virtues are called maslahat, which is the highest value that must be realised. Therefore, when there is conflict between good tradition and textual norms and rules, tradition must take precedence in order to realise mutual benefit. This substantial and cultural Islamic legal thought is relevant to be developed in a diverse or pluralistic society, whether religious, ethnic or cultural. Substantial legal and cultural thought will give birth to products in the form of Islamic law that are diverse, dynamic, elastic and adaptive so that it is not single in form, but varies according to the cultural development of the society in which Islamic law exists. It is this awareness of the diversity of Islamic law in pluralistic societies that has led to classical geographical Fiqh, such as the Hijaz and Iraqi Fiqh, and gave birth to the wealth of modern era Fiqh such as minority, , Nusantara, diversity Fiqh and so on.



REFERENCES

- Alamsyah and Mahmudah, S. (2020). The urgency of cultural tradition approaches ('urf) in determining fatwas of the Indonesian ulema council (MUI). *Talent Development & Excellence*, 12(3), 3520-3530.
- Alamsyah, Mahmudah, S., and Huda, S. (2020). The contextualisation of hadith in Indonesia: Nusantara Ulema's Response to Islamists, *International Journal of Psychosocial Rehabilitation*, 24(7). 158-163.
- Al-Adlabi, Ṣalāḥ al-Dīn Aḥmad. (1988). Manhaj Naqd al-Matn 'Ind 'Ulamā al-Hadīṣ al-Nabawī, *Beirut: Dār al-Āfāq al-Jadīdah*.
- Al-Āmidī, Alī Saif al-Dīn. (1968). al-Iḥkām fi Uṣūl al-Aḥkām, *Kairo: Maṭba'ah Ali Subeih*, jilid 11, 1-3.
- Al-'Asymāwī, Muḥammad Sa'īd. (1983). Uṣūl al-Syarī'ah, *Beirut: Dār Iqra.*
- Al-Damīnī, M. 'A. A. (th) Maqāyīs fi Naqd Mutūn al-Sunnah, *Dissertation on Universitas Islām Imam Muḥammad ibn Saud, Riyaḍ, tt*.
- Al-Namirī, 'Abd al-Mun'im,. (1995). *Al-Sunnah wa al-Tasyrī*, *Beirut: Dār al-Kutub al-'Ilmiyah*.
- Al-Sibā'i, Muḥammad Muṣṭafa (1965). *Al-Sunnah wa Makānatuhā fī al-Tasyrī* al-Islāmi, *Beirut: al-Maktab al-Islami*.
- Al-Syāfī'i, Muḥammad ibn Idrīs, *al-Risālah*, Mesir: Maktabah al-Turāś, 1399 H.
- An-Na'im, Abdullah Aḥmed. (1990). *Towards an Islamic Reformation; Civil Liberties, Human Right and International Law*, Syracuse: *Syracuse University Press*.
- Azami, M. M. (1985). *On Schacht's origins of Muḥammadan jurisprudence*, *John Wiley Publications*, New York.
- Brown, D. W. (1996). *Rethinking tradition in modern Islamic world*. *Cambridge: Cambridge University Press*.
- Coulson, N.J. (1964). *The history of Islamic law*, ed. By W.Montgomery Watt, *Edinburgh: Edinburgh University Press*.
- Goldziher, I. (1981). *Introduction to Islamic Theology and Law*, *Princeton: Princeton University Press*.



- Hallaq, W. B, (1992). Usūl al-Fiqh; Beyond tradition, *Journal of Islamic Studies*, 3(1).
- Rahman, F. (1965). Islamic methodology in history. *Karachi: Central Institute of Islamic Research*.
- Schacht, Joseph, (1965). Modernism and traditionalism in a History of Islamic Law.” *Middle Eastern Studies*, 1(1), 388-400.
- Syahūr, M. (1990). Al-Kitāb wa al-Qur’ān; Qirā’ah Mu’āṣirah, *Damaskus: penerbit al-Ahālī li al-Tibā’ah wa al-Nasyr wa al-Tauzī’*, cet. 2(1). 116-132.
- Wahid, A. (2006). *Islamku Islam anda islam kita: Agama Masyarakat Negara Demokrasi*. Jakarta: The Wahid Institute.
- Wahyuningsih., I. I. & Sri. (2019). The hadith digitisation in millennial era: A study at the Centre for hadith studies.” *QIJIS (Qudus International Journal of Islamic Studies)*, 7(1).
- Wensinc, A.J, (1932). Mu’jām al-Mufāhras li Alfāẓ al-Ĥadīś al-Nabawī al-Syarīf, *Leiden: penerbit E.J. Brill*, Yuslem, Nawir. "Kontekstualisasi Pemahaman Hadis Nabi." *Jurnal Miqat*. 5(1). 122-129.
- Žaid, M. (1964). Al-Maṣlaḥah fi al-Tasyrī’ al-Islāmi wa Najm al-Dīn al-Ṭūfī, *Kairo: Dār al-Fikr al-Arabi*.
- Zailani, K. B. dan Sri, C. (2016). “Reinterpretasi terhadap pemahaman hadis-hadis tentang gender dalam perspektif fiqh al-hadits.” *Jurnal Ushuluddin*. 1(24). Number 1. 158-163.

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